

APPENDIX 1

**THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION
THE UNITED STATES TELEPHONE ASSOCIATION**

March 20, 1998

The Honorable Janet Reno
U.S. Department of Justice
Tenth and Constitution Avenue, N.W.
Washington, DC 20530

Dear Attorney General Reno:

Thank you for your recent letter, clarifying several issues raised at our last meeting with Assistant Attorney General Steve Colgate and the FBI. We gladly accept your offer of further clarification on the FBI's Final Notice of Capacity.

We are concerned, however, at other remaining divisions between industry and the Department of Justice — particularly the FBI's insistence that the compliance deadline will only be extended for carriers that agree to provide all nine of the "punchlist" items as well as the Bureau's failure to recognize that compliance is not reasonably achievable within the current statutory deadline for currently installed or deployed technologies.

It is unreasonable to ask industry to pursue implementation of the punchlist features at this time when neither the FBI nor the Enhanced Surveillance Standard (ESS) Committee has developed detailed and standardized specifications for these requirements. This is, in essence, a demand that if industry wants an extension it must abandon its deeply held views about what features CALEA requires. Finally, failure to deem currently installed or deployed technologies in compliance will shift costs unreasonably to industry and impose competitive disadvantages between different carriers and technologies.

For these reasons, we would understand if you decide, as you have previously indicated, that the best resolution of this issue is to request a binding determination from the Federal Communications Commission. Such a request will not affect industry's willingness to participate in either the 60-day pricing exercise discussed at our meeting on Friday, March 6, 1998, the on-going ESS effort, or industry's commitment to develop CALEA solutions for future technologies.

We appreciate your continued personal involvement in these efforts and hope that an efficient implementation of CALEA will soon be possible.

Sincerely,



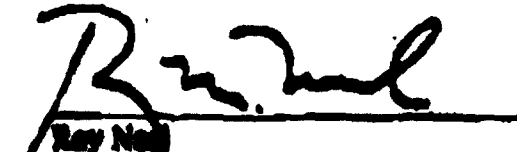
Thomas E. Wheeler
President and CEO
The Cellular Telecommunications
Industry Association



Jay Kirtland
President and CEO
The Personal Communications
Industry Association



Matthew J. Houghton
President
The Telecommunications Industry
Association



Ray Noll
President
The United States Telephone
Association

APPENDIX 2

TESTIMONY OF

MATTHEW J. FLANIGAN

PRESIDENT,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

BEFORE THE CRIME SUBCOMMITTEE OF

THE HOUSE COMMITTEE ON THE JUDICIARY

October 23, 1997

A. Introduction

Thank you Mr. Chairman for giving me the opportunity to appear before you and the other distinguished members of your committee. No one can dispute that these hearings are timely and necessary. My appearance today is on behalf of the members of the Telecommunications Industry Association ("TIA"). TIA represents more than 600 United States companies that manufacture and supply the equipment that is the backbone of the telecommunications industry -- from switches for landline, cellular, PCS and satellite systems to pagers to two-way radios.

Implementation of the Communications Assistance for Law Enforcement Act of 1994 ("CALEA") is at an impasse that industry and government have not been able to break. Congress intended that most of the implementation of the act would have occurred by the act's fourth anniversary, October 25, 1998. Regrettably, for the reasons I will discuss below, that deadline cannot be met.

I am pleased to report, however, that in the past week manufacturers have received a number of promising signals from the FBI. After several months of being excluded from meetings, last week TIA and several manufacturers were contacted by Mike Warren, the new section head for the CALEA Implementation Section at the FBI. He asked for a series of meetings and has offered to enter into good faith negotiations with the manufacturers, with the hope of achieving an agreement on CALEA's capability requirements.

Unfortunately, this is not the first time that such an appeal has been made by the FBI. In many ways, the FBI's current request is reminiscent of those we received when we first began the standards process in early 1995, immediately after the passage of CALEA.

At that time, the FBI approached TIA and asked, understandably, to be involved in the standards process. TIA was glad to welcome the FBI into the process, hoping that with the constructive participation of law enforcement we would be able to arrive at a standard that was

acceptable to all parties. Indeed, as reflected in our Engineering Manual, TIA has always encouraged the active participation of government entities in our standards process.

Unfortunately, our attempts to avoid confrontation and at good faith negotiation with law enforcement have put us where we are today: a year away from the compliance deadline and still without a standard to which to build.

B. The Standards Process

As the president of TIA, I am in a unique position to comment on the industry standards process and how we arrived at our current situation. TIA, as an institution accredited by the American National Standards Institute (ANSI), was selected by the telecommunications industry to promulgate the industry's CALEA standard.

Upon passage of CALEA, TIA promptly initiated a standards program. TIA set an ambitious schedule -- hoping to complete the standard on an extremely expedited basis. Although there were some substantive disagreements within industry (as there always are in a standards process), these were resolved on a fairly rapid basis.

Disagreements with the FBI, however, were not so easily resolved. It gradually became apparent that law enforcement and industry had markedly different interpretations of what was required under CALEA.

In retrospect, we should have done what CALEA provides: passed the features on which industry agreed as the industry "safe harbor" standard and told the FBI that if it considered this standard to be deficient it should challenge the standard at the FCC. Instead, however, we accepted repeated FBI requests for more consultation, more meetings, and more drafts -- all in the hopes of arriving at some acceptable middle ground where the FBI and industry could reach consensus.

In fact, for the past two and a half years, a vast majority of the standards meetings were devoted to addressing law enforcement's concerns and seeking such an agreement.

DOCKET FILE COPY DUPLICATE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Implementation of Section 103 of
the Communications Assistance for
Law Enforcement Act

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MAR 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JOINT MOTION TO DISMISS

CTIA'S JULY 16, 1997 PETITION FOR RULEMAKING

1. The Department of Justice and the Federal Bureau of Investigation (FBI), on behalf of themselves and other federal, state, and local law enforcement agencies, hereby move for an order dismissing the Cellular Telecommunications Industry Association's (CTIA's) July 16, 1997 Petition for Rulemaking.¹ This motion is made pursuant to Sections 1.2 and 1.401(e) of the Federal Communications Commission Rules on the grounds that CTIA's petition is now moot and plainly does not warrant the attention of the Commission. 47 C.F.R. §§ 1.2 and 1.401(e).

I. BACKGROUND

2. On July 16, 1997, CTIA filed a Petition for Rulemaking requesting that the Commission

¹ CTIA's petition has not yet been assigned a docket number.

establish an electronic surveillance technical standard to implement Section 103(a) of the Communications Assistance for Law Enforcement Act (CALEA),² 47 U.S.C. § 1002(a). The petition stated that no industry standard had been adopted at that time because of an impasse between the industry and law enforcement over the capabilities that should be incorporated into the standard. CTIA requested that the Commission adopt as the standard the then-current industry consensus document which it attached to the petition.

3. The substantive legal basis for CTIA's petition was Section 107(b) of CALEA, 47 U.S.C. § 1006(b). That provision states that if industry associations or standard-setting organizations "fail to issue" technical requirements or standards, then the Commission may be petitioned to establish those standards. As of the date of the petition -- July 16, 1997 -- CTIA was correct in alleging that there was a failure on the part of industry and standard-setting organizations to issue technical requirements or a standard, as none existed.

4. However, on December 8, 1997, the premise for CTIA's petition ceased to exist. On that date, members of the telecommunications industry approved interim standard J-STD-025, despite its failure to include the assistance capabilities that law enforcement had consistently maintained were required by Section 103(a) of CALEA, 47 U.S.C. § 1002(a). The standard was then published by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications

² The Communications Assistance for Law Enforcement Act, Pub L. No. 103-414, 108 Stat. 4270 (1994) (codified as amended in 18 U.S.C. and 47 U.S.C.).

Industry Solutions.³

II. DISCUSSION

CTIA'S PETITION IS MOOT AND DOES NOT WARRANT CONSIDERATION BY THE COMMISSION.

5. CTIA's petition should be dismissed on the grounds that it is moot and does not warrant consideration by the Commission. Section 1.1401(e) of the Commission rules provides:

Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

47 C.F.R. § 1.401(e).

A matter is moot when it presents no actual controversy or where the issues have ceased to exist.⁴ Here, CTIA's petition was premised on the fact that no industry standard had been adopted at the time of its filing. After CTIA filed its petition, industry did adopt a standard. It thereby rendered CTIA's petition moot.

6. For the same reasons that the petition is moot, CTIA's petition should also be dismissed on the grounds that "it does not warrant consideration by the Commission."⁵ In addition, CTIA's petition does not warrant consideration by the Commission in light of the Joint Petition for

³ See Attachment A.

⁴ BLACKS LAW DICTIONARY 1008 (6th Ed. 1990) (defining "moot case").

⁵ 47 C.F.R. § 1.401(e).

Expedited Rulemaking being filed separately by the Department of Justice and the FBI on behalf of law enforcement. The Joint Petition for Expedited Rulemaking alleges and demonstrates that the interim industry standard is "deficient" as that term is used in Section 107(b) of CALEA. In light of events that have taken place since the filing of CTIA's petition, the petition filed by the Department of Justice and the FBI supersedes CTIA's petition in terms of relevancy and accuracy. There is simply no reason to keep CTIA's outdated petition pending.

III. CONCLUSION

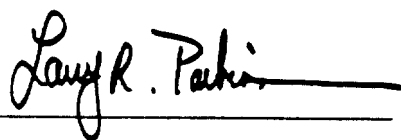
7. For the foregoing reasons, the Department of Justice and the FBI respectfully request that CTIA's July 16, 1997, Petition for Rulemaking be dismissed.

Date: March 27, 1998

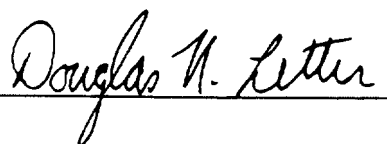
Respectfully submitted,

Louis J. Freeh, Director
Federal Bureau of Investigation

Honorable Janet Reno
Attorney General of the United States

A handwritten signature in cursive script, reading "Larry R. Parkinson", followed by a horizontal line.

Larry R. Parkinson
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A handwritten signature in cursive script, reading "Douglas N. Letter", followed by a horizontal line.

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Before the
Federal Communications Commission
Washington, D.C. 20554

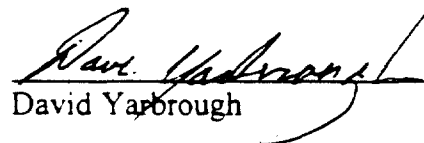
Certificate of Service

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In the Matter of:)
)

Implementation of Section 103 of)
the Communications Assistance for Law)
Enforcement Act)
)
_____)

I, David Yarbrough, a Supervisory Special Agent in the office of the Federal Bureau of Investigation (FBI), 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151, hereby certify that, on March 27, 1998, I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of the herewith Motion to Dismiss in the above-referenced proceeding, the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Chantilly, Virginia this 27th day of March, 1998.


David Yarbrough

**In the Matter of
Implementation of Section 103 of the
Communications Assistance for Law Enforcement Act**

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Establishment of Technical Requirements
and Standards for Telecommunications
Carrier Assistance Capabilities Under the
Communications Assistance for Law
Enforcement Act

Docket No. _____

JOINT PETITION FOR EXPEDITED RULEMAKING

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Federal Bureau of Investigation

Honorable Janet Reno
Attorney General of the United States

Larry R. Parkinson
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Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
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SUPERVISOR, SPECIAL AGENT
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WASHINGTON DC

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SUMMARY

The Communications Assistance for Law Enforcement Act (CALEA) was enacted in 1994 to ensure that ongoing technological changes in the telecommunications industry would not compromise the ability of federal, state, and local law enforcement agencies to engage in lawful surveillance activities. To that end, Section 103 of CALEA explicitly obligates telecommunications carriers to ensure that their equipment, facilities, and services are capable of expeditiously isolating and delivering to law enforcement agencies all communications and call-identifying information that law enforcement is authorized to acquire.

CALEA contemplates that the communications industry, acting in consultation with law enforcement agencies, will develop technical requirements and standards that implement the assistance capability requirements of Section 103 and act as a "safe harbor" for industry. At the same time, Congress recognized that the standards developed by industry might be inadequate to carry out the statutory mandates. Section 107(b) of CALEA therefore authorizes the Commission to issue rules establishing additional technical requirements and standards if a government agency believes that an industry standard is deficient.

The Department of Justice and the Federal Bureau of Investigation (FBI) are filing this petition to initiate an expedited rulemaking proceeding under Section 107(b) of CALEA and related provisions. They are taking this step because, after careful consideration and consultation, they have determined that the interim technical standard adopted by industry is seriously deficient. In the view

of the Department of Justice, the FBI, and other federal, state and local law enforcement agencies, the industry's interim standard is not adequate to ensure that law enforcement will receive all of the communications content and call-identifying information that carriers are obligated to deliver under Section 103 and the applicable electronic surveillance statutes. The interim standard also fails to ensure that information will be delivered in a timely manner. Unless the deficiencies in the interim standard are corrected by the Commission, information that is critical to public safety and law enforcement will be lost, and Congress' goal of preserving the surveillance capabilities of law enforcement agencies in the face of technological changes will be seriously compromised.

This petition explains why the industry's interim standard is deficient and what services and features should be added to correct its deficiencies and carry out the mandates of CALEA. The petition is accompanied by a proposed rule that sets forth, in specific terms, the changes that the petitioners believe should be adopted by the Commission. The petitioners request that the Commission initiate an expedited rulemaking proceeding leading to the adoption of the proposed rule and any other requirements and standards that the Commission determines to be appropriate under Section 107(b).

I. INTRODUCTION

1. The Department of Justice and the FBI, on behalf of themselves and other federal, state, and local law enforcement agencies,¹ respectfully request the Commission to initiate an expedited rulemaking to establish technical requirements or standards for electronic surveillance assistance by telecommunications carriers under the Communications Assistance for Law Enforcement Act (CALEA), Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. and 47 U.S.C.). This petition is filed pursuant to Sections 103 and 107(b) of CALEA (47 U.S.C. §§ 1002 and 1006(b)), Sections 4(i) and 229(a) of the Communications Act of 1934 (47 U.S.C. §§ 154(i) and 229(a)), and Section 1.401(a) of the Commission's rules (47 C.F.R. §1.401(a)).

2. Section 103 of CALEA (47 U.S.C. § 1002) imposes affirmative obligations on telecommunications carriers to ensure that their equipment, facilities, and services are capable of providing specified assistance to law enforcement in the conduct of authorized electronic surveillance. Under Section 107(a) of CALEA (47 U.S.C. § 1006(a)), a carrier is deemed to be in compliance with Section 103 if it is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization to meet the requirements of Section 103. However, compliance with the industry standard is merely one way

¹ Following passage of CALEA, the FBI assembled the Law Enforcement Technical Forum ("LETTF"), consisting of 21 representatives from federal agencies and 30 from state and local law enforcement agencies, as well as the Royal Canadian Mounted Police. LETF members participated in the development of this petition. In turn, the FBI and the LETF have coordinated CALEA implementation issues, and developed consensus positions, with several hundred of the major law enforcement agencies and prosecutors' offices across the United States.

of assuring compliance with Section 103: a carrier can satisfy its obligations by any means that meet Section 103's underlying assistance capability requirements. Moreover, if a government agency believes that technical requirements or standards adopted by an industry association or standard-setting organization are deficient, it may petition the Commission under Section 107(b) (47 U.S.C. § 1006(b)) to establish, by rule, technical requirements or standards that meet the requirements of Section 103.

3. On December 8, 1997, the Telecommunications Industry Association (hereafter referred to as "TIA") published an interim technical standard ("interim standard") concerning electronic surveillance assistance requirements for telecommunication carriers providing wireline, cellular, and personal communications services. This petition is being filed because the interim standard lacks specified electronic surveillance assistance capabilities and related provisions that are required by CALEA. The Department of Justice and the FBI ask the Commission, by rule, to supplement the interim standard by incorporating additional capabilities and provisions that will satisfy the requirements of Sections 103 and 107(b) of CALEA. A proposed rule that sets forth requested technical requirements and standards is contained in Appendix 1 of this petition.

4. The technical requirements and standards sought in this petition are intended to operate in addition to, not in lieu of, the interim standard. Thus, the interim standard should not be stayed pending a determination of this rulemaking.

5. The Department of Justice and the FBI urge the Commission to consider this matter on an expedited basis so that the deficiencies of the interim standard can be corrected as soon as possible. Expedited consideration will further the strong public safety interest in preserving law enforcement's ability to conduct effective, lawfully authorized electronic surveillance in its continuing efforts to combat criminal activity. Expedited consideration also will help to avoid delay in the development, manufacture, and deployment of CALEA-compliant solutions for existing and future equipment so that law enforcement agencies can effectively fulfill their public functions.

II. BACKGROUND

6. This petition concerns statutory obligations placed on telecommunication carriers by CALEA. To understand fully the nature and scope of those obligations, it is essential to understand the background of this legislation. As described below, CALEA was passed primarily at the behest of the FBI and other law enforcement agencies, despite opposition from the telecommunications industry, in order to ensure that lawful electronic surveillance as an invaluable crime-fighting tool is not thwarted by technological and structural changes in the telecommunications industry. CALEA is designed to preserve the ability of federal, state, and local law enforcement agencies to carry out lawful surveillance in the face of these changes.